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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,100	08/17/2006	James J. Sanfilippo	4700/78	5108
7590 Frank C Nicholas Cardinal Law Group Suite 2000 1603 Orrington Avenue Evanston, IL 60201		09/21/2009	EXAMINER JACYNA, J CASIMER	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 09/21/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,100

Applicant(s)

SANFILIPPO ET AL.

Examiner

J. Casimer Jacyna

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1448 or PTO-889)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. It is noted that this application claims subject matter disclosed in prior Application No. PCT/US05/05006, filed 2/17/2005. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally

delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. **Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.**

2. The disclosure is objected to because of the following informalities: The Brief Description of the Drawings does not include a description of figure 20 on page 7.

Appropriate correction is required.

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When

claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 26 (second occurrence) been renumbered 36.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 8, 12-19, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by lack U.S. 5,632,416 to Lane, Jr. et al. The Lane, Jr. et al. reference discloses a collapsible dispenser pouch comprising a product containment portion (30), at least one spout-receiving portion (24) in communication with the product containment portion. A lower heat sealed region (36, 37) adjacent a bottom end of the containment portion including bag alignment indicators (32, 34), wherein the bag alignment indicator allows alignment with a valve to position the spout receiving portion to receive a dispenser spout, as recited in claims 1 and 14. The lower sealed region comprises a tear strip (38) configured to open the spout receiving portion, the tear strip comprising perforations (40), as recited in claims 2, 3, 12, 13, 15, 16, 24 and 25. The alignment indicator is located between the product containment portion and the spout receiving portion, as recited in claims 4 and 17. The bag further includes a support portion (26), located at an end of the product containment portion opposite the lower sealed region, as recited in claims 5, 6, 18 and 19.

6. Claims 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by lack U.S. 4,890,744 to Lane, Jr. et al. The Lane, Jr. et al. reference discloses an easy open product pouch including a product containment portion (22) and at least two spout openings (86 and 88), fig. 6, in communication with the product containment portion. The pouch has a lower sealed region with the spout portions disposed within the lower sealed region, as recited in claims 27 and 28.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7, 9-11 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,632,416 to Lane, Jr. et al. in view of U.S. 4,925,711 to Akao et al. The Lane Jr. et al. reference does not disclose the material from which the bag is formed, only stating that the material is sufficiently flexible to enable the pouch to be collapsed by various operating means, so as to substantially completely empty the contents therefrom. The patent to Akao et al. discloses packaging bags formed from lamination of coextruded multilayer inflation films including polyethylene, polypropylene, and various other materials recited in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material from which the bag of Lane Jr. et al. is made so that it is formed of a lamination of coextruded multilayer inflation films as suggested by Akao et al. in order to form a

collapsible dispenser pouch that has greater physical strength, such as tensile strength, tear strength and bursting strength.

9. Claims 26-29, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,632,416 to Lane, Jr. et al. in view of U.S. 4,890,744 to Lane, Jr. et al. Lane '416 discloses a dispensing bag substantially as claimed but does not disclose two spout receiving portions. However, Lane'744 teaches another dispensing bag having either a single spout as in figures 1-5 or two spout receiving portions 86, 88 in figure 6 for the purpose of enabling the bag to simultaneously connect to two spouts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lane'416 with two spout receiving portions as, for example, taught by Lane'744 in order to enable the bag to simultaneously connect to two spouts.

10. Claims 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,632,416 to Lane, Jr. et al. in view of U.S. 4,890,744 to Lane as applied to claim 26 above and further in view of U.S. 4,925,711 to Akao et al. Lane Jr. '416 does not disclose the material from which the bag is formed, only stating that the material is sufficiently flexible to enable the pouch to be collapsed by various operating means, so as to substantially completely empty the contents therefrom. The patent to Akao et al. discloses packaging bags formed from lamination of coextruded multilayer inflation films including polyethylene, polypropylene, and various other materials recited in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material from which the bag of Lane Jr. et al. is made

so that it is formed of a lamination of coextruded multilayer inflation films as suggested by Akao et al. in order to form a collapsible dispenser pouch that has greater physical strength, such as tensile strength, tear strength and bursting strength.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754